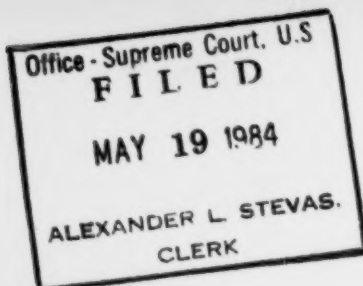


83 - 1895



IN THE
SUPREME COURT OF THE UNITED STATES

Term, 19____

No.

JOSEPH MARINELLI,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

STANLEY W. GREENFIELD,
Counsel for Petitioner,
Joseph Marinelli

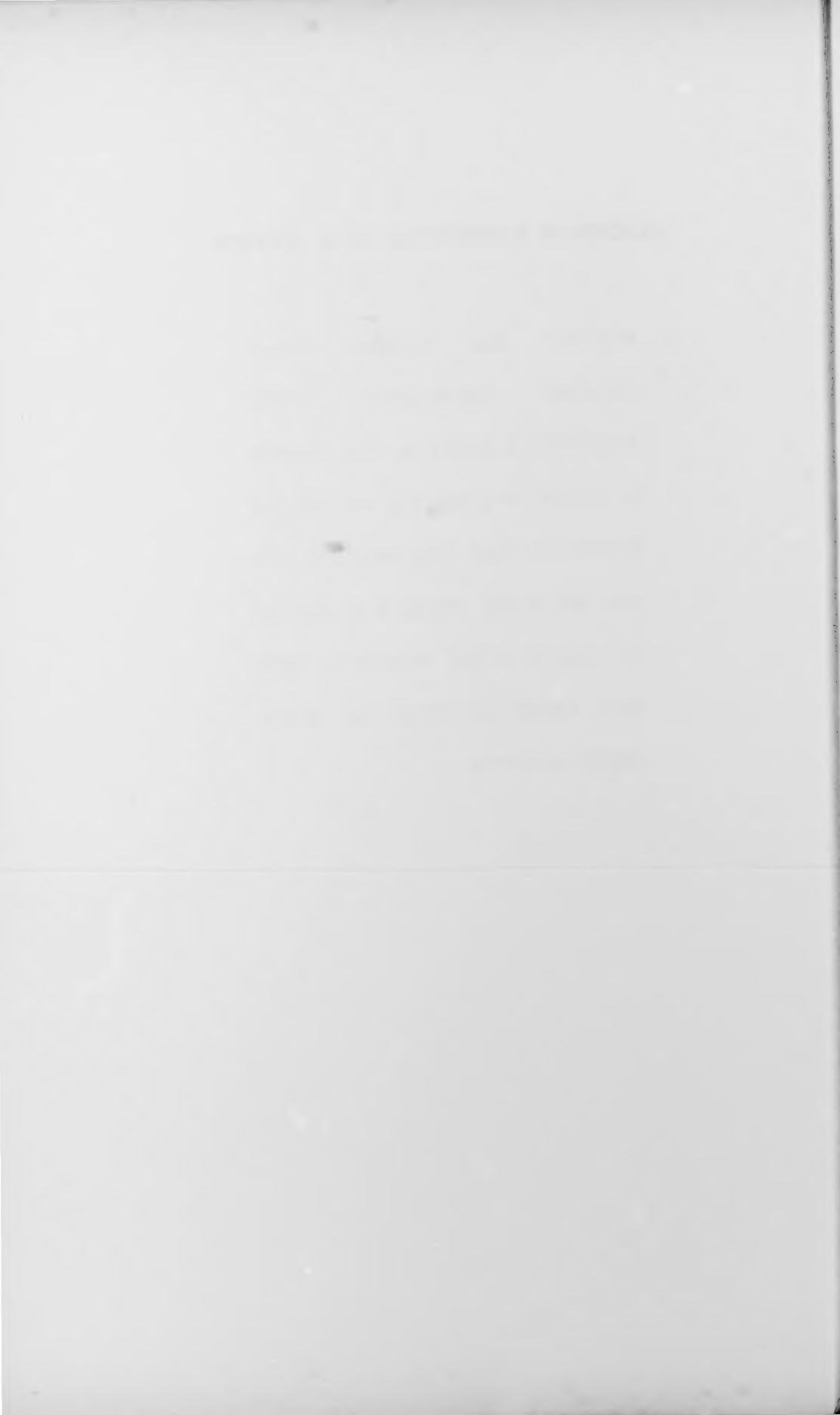
GREENFIELD & MURTAGH
728 Fifth Avenue
Pittsburgh, Pennsylvania 15219
Telephone: 412-261-4466

44 PP



QUESTION PRESENTED FOR REVIEW

L. Whether the District Court violated Petitioner's Fifth Amendment Right to due process by failing to grant his Motion for Severance from trial with his wife who was solely charged in four of six counts of the Indictment with mail fraud involving her solely owned property.



**PARTIES TO THIS PROCEEDING
IN THE COURT BELOW**

This action, as filed in the United States Court of Appeals for the Third Circuit, was styled United States of America v. Joseph Marinelli, at No. 83-5275. Petitioner's co-defendant below, Jacqueline Marinelli, filed a separate appeal denominated as United States of America v. Jacqueline Marinelli, No. 83-5274, which appeals were consolidated for consideration before the Third Circuit Court of Appeals on September 28, 1983.

THE HISTORY OF THE
CITY OF BOSTON

FROM THE FIRST SETTLEMENT
TO THE PRESENT TIME
BY
JOHN HUTCHINGS
OF THE BOSTON BAR
IN TWO VOLUMES
VOL. I.
BOSTON: PUBLISHED BY
J. B. ALLEN, 1825.

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THE HISTORY OF THE

REPUBLIC OF THE

UNITED STATES OF AMERICA

FROM 1776 TO 1863

BY

JOHN B. HARRIS

VOLUME I

1776-1800

NEW YORK

1863

THE HISTORY OF THE

REPUBLIC OF THE

UNITED STATES OF AMERICA

FROM 1776 TO 1863

BY

JOHN B. HARRIS

OPINIONS BELOW

The United States Court of Appeals for the Third Circuit issued a Memorandum Opinion and Judgment on March 29, 1984. A copy of the Memorandum Opinion is contained in the Appendix at pp. 1a-6a. A copy of the Judgment is contained in the Appendix at pp. 7a-8a.

STATEMENT OF JURISDICTION

The judgment of the United States Court of Appeals for the Third Circuit was entered on March 29, 1984. Petitioner did not submit a Petition for Rehearing. The jurisdiction of the Supreme Court of the United States is invoked under Title 28 United States Code Section 1254(1).

**CONSTITUTIONAL PROVISIONS
INVOLVED IN THIS CASE**

The Fifth Amendment to the Constitution of the United States provides:

No person shall be held to answer to a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

CONSTITUTIONAL HISTORY OF THE UNITED STATES

BY
J. H. COOPER

NEW YORK, 1900

The Constitution of the United States is the foundation of our government. It is the supreme law of the land, and it is the duty of every citizen to know it. This book is a history of the Constitution, from its origin to the present day. It tells of the struggles and the triumphs of the framers, and of the changes and the growth of the document. It is a book for every citizen, and it is a book for every student of American history.

STATEMENT OF THE CASE

Procedural

This Petition is before the Court from the denial of Petitioner, Joseph Marinelli's, (hereinafter "Joseph"), appeal from the Judgment of Sentence imposed by the trial court, and the upholding of the denial of his Motion for Severance. Petitioner's appeal to the United States District Court for the Third Circuit was joined by Co-Defendant, Jacqueline Marinelli, (hereinafter "Jacqueline"). A Motion To Consolidate the two appeals was granted by Order of the Third Circuit Court of Appeals dated September 28, 1983. This Petition is filed by Petitioner Joseph Marinelli, alone, and is not joined by Co-Defendant, Jacqueline Marinelli.

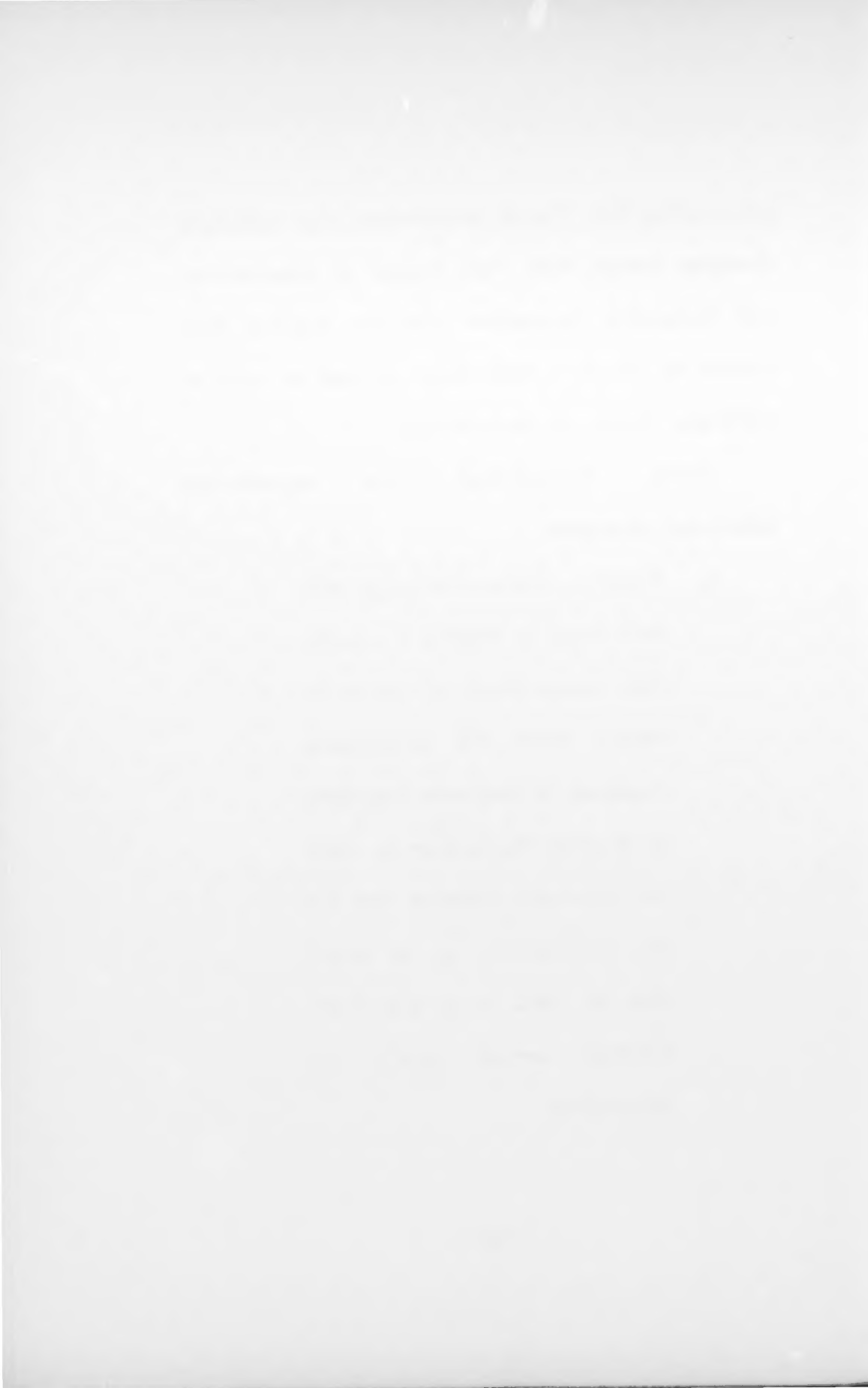
Joseph was jointly tried in a Six Count Indictment with his wife Jacqueline. She was first charged alone in a Four Count Indictment in September of 1982. On December 3, 1982, a



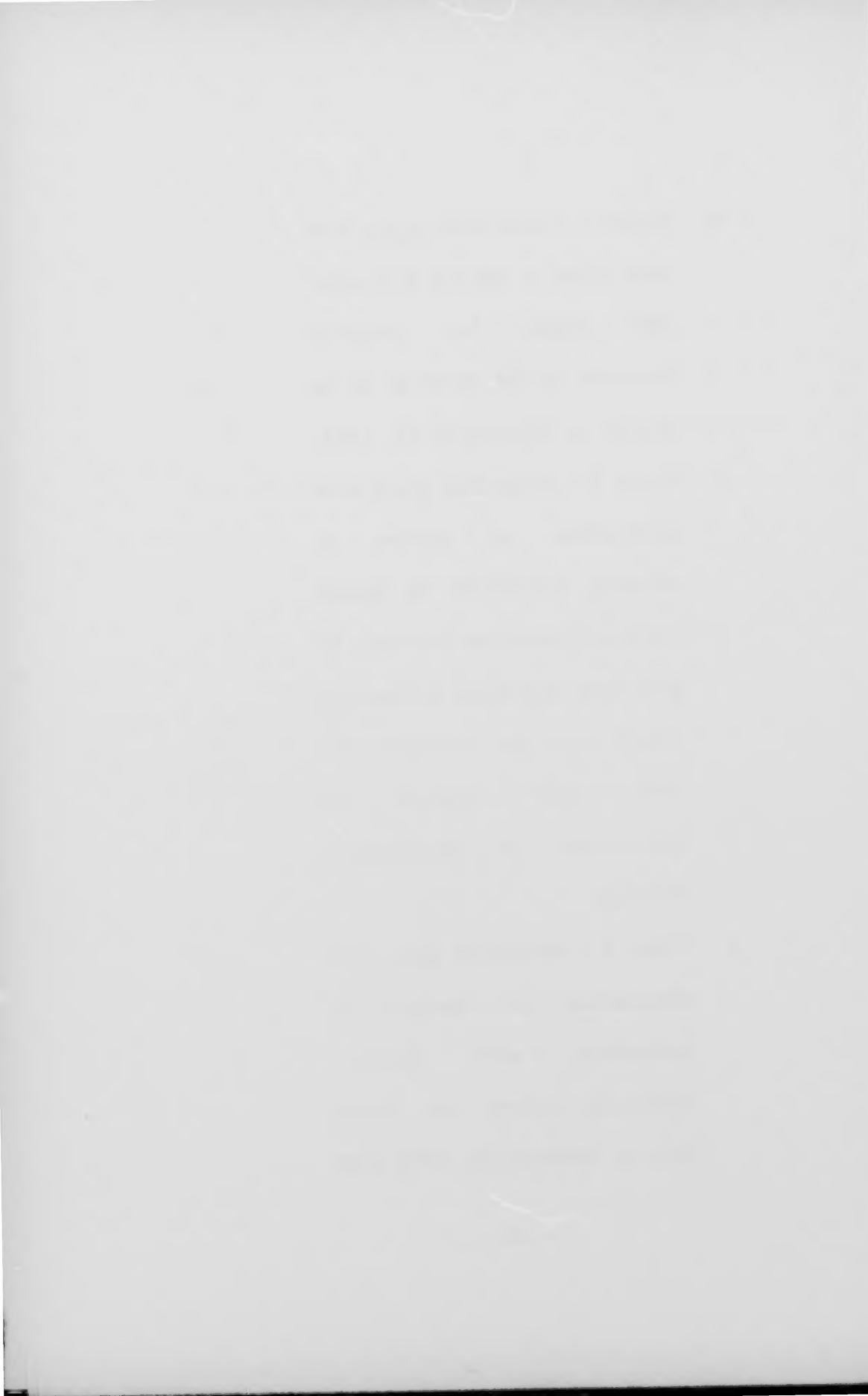
superceding Six Count Indictment was returned, charging Joseph with Two Counts of Obstruction, and recharging Jacqueline with the original Four Counts of the first Indictment as well as with an additional Count of Obstruction.

Fairly summarized, the superceding indictment charged:

- a. Count 1 - Jacqueline alone with mail fraud in causing a fraudulent, sworn proof of loss to be mailed from Sill Adjustment Company to Reliance Insurance on or about September 11, 1981 for insurance benefits due for the destruction, on or about May 16, 1981, of an apartment building owned solely by Jacqueline;



- b. Count 2 - Jacqueline alone with mail fraud in causing a fraudulent claim for property contents of the building to be mailed on September 25, 1981;
- c. Count 3 - Jacqueline alone with obstruction of justice in offering \$10,000.00 to James Zarilla, (herinafter Zarilla), to give false testimony before the Grand Jury on February 25, 1982 with respect to renovations on Jacqueline's building.
- d. Count 4 - Jacqueline alone with subornation of perjury in connection with Zarilla's testimony before the Grand Jury on February 25, 1982, with



respect to renovations which he made on Jacqueline's building. Zarilla was eventually granted immunity and testified as a prosecution witness against Jacqueline only.

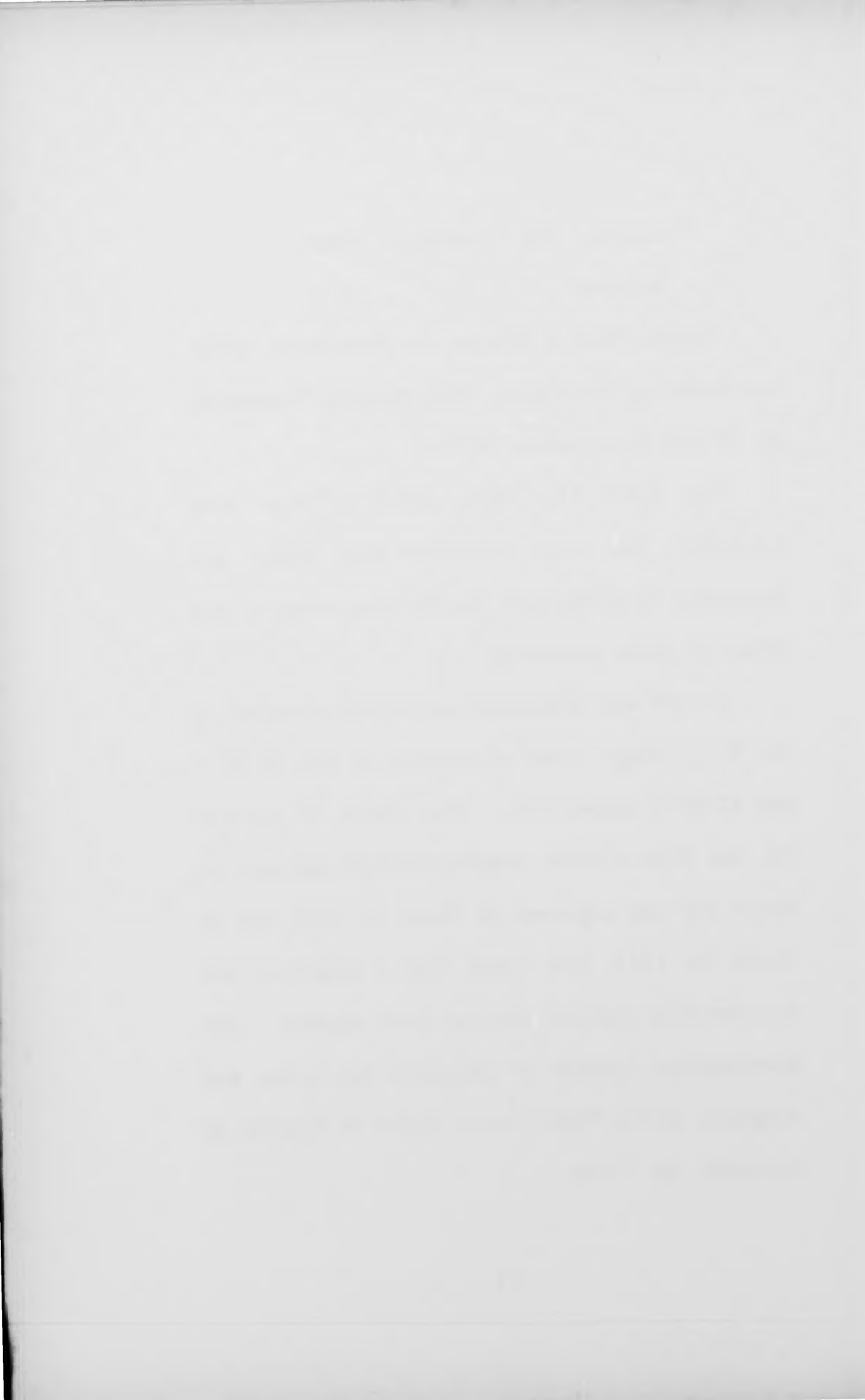
- e. Count 5 - Jacqueline and Joseph with obstruction of justice in attempting, on March 1, 1982, to induce a Joseph Cioffi, Jr. to provide fake bills to support renovations allegedly made by Zarilla to Jacqueline's building; and
- f. Count 6 - Joseph alone with obstruction of justice in attempting to get a Norman Shapiro to provide record

backup for Zarilla's renovations.

Joseph filed a Motion for Severance, which was denied by the Court. (See Hearing Transcript, pp. 56-57), (hereinafter "H.T.").

On April 14, 1983, after a jury trial conviction, the Court sentenced both Joseph and Jacqueline to thirty (30) months imprisonment and three (3) years probation.

Joseph and Jacqueline separately appealed to the Third Circuit Court of Appeals at Nos. 83-5275 and 83-5274 respectively. The Court of Appeals for the Third Circuit considered both appeals on Briefs and oral argument on March 5, 1984, and on March 29, 1984, that Court filed a Judgment and Memorandum Opinion denying both appeals. See Memorandum Opinion at Appendix, pp. 1a-6a, and Judgment of the Third Circuit Court of Appeals at Appendix, pp. 7a-8a.



Petitioner filed a Motion to the Third Circuit Court of Appeals on April 11, 1984 to Stay the Mandate pending this application to the Supreme Court of the United States for a Writ of Certiorari.

On April 19, 1984, the Third Circuit Court of Appeals entered an Order staying the mandate herein until May 19, 1984.

Background

In March, 1981, Jacqueline hired Zarilla, a New Castle, Pennsylvania contractor, to perform minor repairs at the Hancock Building. Zarilla replaced banisters on the stairwell and performed other minor carpentry tasks (H.T., p. 523). For his services, Zarilla was paid approximately \$700.00 (H.T., p. 525).

After fire destroyed the Hancock Building on May 16, 1981, Jacqueline caused a sworn proof of loss document to be mailed to the Reliance Insurance Company on September 11, 1981, to

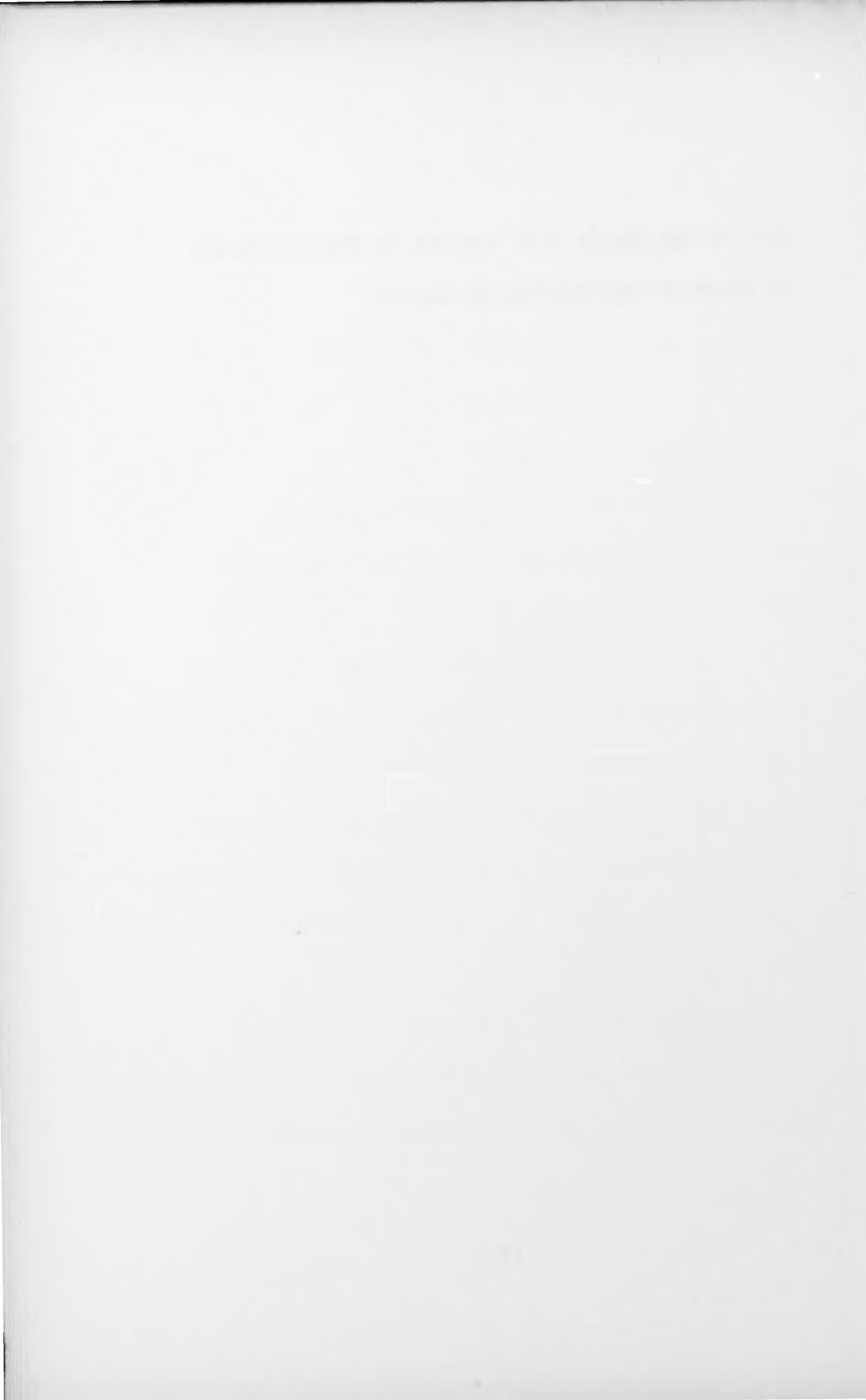
recover proceeds on her insurance policy for replacement cost of the building.

On September 25, 1981, a claim for contents totaling \$46,375.00 was prepared by Jack Harter, Jacqueline's father, and Mort Berry, an agent for a professional fire adjustment company, and mailed to the insurance company (Trial Transcript, pp. 972, 975), (hereinafter "T.T.").

Zarilla testified that he had been approached by Jacqueline in October, 1981 to supply her with fraudulent receipts to substantiate that she had in fact paid him for \$7,000.00 for services performed prior to the fire (T.T., p. 529). He cooperated and procured fraudulent bills from various supply houses (T.T., pp. 538-540).

Despite Zarilla's immunized testimony as a prosecution witness, he at no time implicated Joseph in any of the counts involving Jacqueline,

nor did he testify with respect to any knowledge of arson of the building by anyone.



**REASON RELIED UPON FOR THE
ALLOWANCE OF THE WRIT**

THE DISTRICT COURT VIOLATED
PETITIONER'S FIFTH AMEND-
MENT RIGHT TO DUE PROCESS
BY FAILING TO GRANT HIS
MOTION FOR SEVERANCE FROM
HIS WIFE.

It is a well recognized principle of this Court that the joinder or severance of co-defendants in criminal trials involves significant Fifth Amendment due process rights. Delli Paoli v United States, 352 U.S. 232, 246-248 (1957) (Frankfurter, J. Dissenting). See generally, Joint and Single Trials Under Rules 8 and 14 of the Federal Rules of Criminal Procedure, 74 Yale L.J. 553. In addition, the Third Circuit has often addressed the due process rights of co-defendants who have moved for severance of their trials. See, United States v. Boscia, 573 F.2d 827, 832 (3rd Cir., 1978); United States v. Boyd, 595 F.2d 120 (3rd Cir., 1978). In light of the important Fifth Amendment rights

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CHICAGO, ILL. 60637
TEL. 773-936-5000

implicated in the request for severance from his co-defendant spouse, Joseph asserts that abuse of the District Court's discretion in denying severance under Rule 8(a) and Rule 14 of the Federal Rules of Criminal Procedure amounts to a violation of his Fifth Amendment due process rights. United States v. Stout, 499 F.Supp. 605 (E.D. Pa., 1980); United States v. Cianciulli, 476 F.Supp. 845, 846-847 (E.D. Pa., 1979); See generally, United States v. Frankenberry, 696 F.2d 239 (3rd Cir., 1982).

Rule 8(a) of the Federal Rules of Criminal Procedure provides:

Two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

Counts 5 and 6 charging Joseph with obstruction were misjoined with Counts 1 through 4 charging Jacqueline only, as they were plainly not of the same or similar character as Counts 1 and 2 charging Jacqueline with mail fraud, or Counts 3 and 4 charging Jacqueline with obstruction of justice and subornation of perjury, given that Joseph was in no way implicated in any of her alleged criminal conduct.

Indeed, the error in the trial court's failure to sever these defendants is most telling in light of even the prosecutor's recognition of the potential for prejudice in a joint trial of Joseph and Jacqueline.

PROSECUTOR: The principal charge, of course, is against Mrs. Marinelli and the focus of the Government's presentation is going to be on the burning of the building and that sort of thing and very, very little evidence deals with Mr. Marinelli in that instance so the only fear I see, of course, is the prejudicial flow of that kind of testimony and that kind of evidence affecting a jury's determination as far as Mr. Marinelli is concerned.

THE COURT: You're making a pretty strong argument for severance of the defendant Joseph Marinelli from the case.

PROSECUTOR: Your Honor, that very well may be true but I want to be candid with the Court.

THE COURT: I appreciate it.

PROSECUTOR: We concede that with regard to Mr. Marinelli, there's going to be very, very little evidence regarding the fire itself and the attempt to collect insurance proceeds... .

(H.T., pp. 11-12) (emphasis supplied). Thus, neither proof nor allegations with respect to Jacqueline's

conduct set out in Counts 1-4 in any way related to Joseph.

Moreover, Joseph's criminal conduct as alleged in Counts 5 and 6 was not part of a plan or scheme to commit any fraud perpetrated by Jacqueline, as set out in Counts 1 through 4, nor did Zarilla testify otherwise at the trial.

Rule 14 of the Federal Rules of Criminal Procedure provides:

If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or information or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance the court may order the attorney for the government to deliver to the court for inspection in camera any statements or confessions made by the defendants which the government intends to introduce in evidence at the trial.

Since the facts show no common scheme or plan, severance was appropriate. This Court, in requiring severance of co-conspirators, has made clear the criteria with which to judge the appropriateness of severance. As here:

The conspiracies were therefore distinct and disconnected, not parts of a larger general scheme . . . there was no drawing of all together in a single over-all comprehensive plan.

Blumenthal v. United States, 332 U.S. 539, 558 (1947). Indeed the Third Circuit itself has held that failure to sever requires "some evidence linking each defendant to the conspiracy". United States v. Kenny, 462 F.2d 1205 (3rd Cir., 1972), citing Blumenthal, supra., p. 1216.

Joseph is aware of the general proposition that there is no prejudice to joinder where evidence of each of the joined offenses would be admissible in a separate trial involving the other, within the meaning of Rule 404(b) of the Federal Rules of

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Evidence governing the admissibility of other "acts". United States v. Seidel, 620 F.2d 106 (4th Cir., 1980); United States v. Neiderberger, 580 F.2d 63 (3rd Cir., 1978). Moreover, he is also aware of the heavy burden a movant has in demonstrating that the District Court abused its discretion. United States v. Dansker, 537 F.2d 40 (3rd Cir., 1976). Nevertheless, the Circuit Court misapplied its own test in upholding the District Court's denial of severance.

The severance test in the Third Circuit is built upon time honored principles enunciated in this Court's landmark holding in Bruton v. United States, 391 U.S. 123 (1967). "A jury cannot segregate evidence into intellectual boxes." (Id., p. 131, citing Jackson v. Denno, 378 U.S. 368 (1963)). Similarly, the Third Circuit has held that:



. . . The primary consideration is whether the jury can reasonably be expected to compartmentalize the evidence as it relates to separate defendants in view of its volume and limited admissibility.

United States v. DeLarosa, 450 F.2d 1057, 1065 (3rd Cir., 1971), Cert. denied, 405 U.S. 927 (1971) (emphasis supplied). See also, United States v. Somers, 496 F.2d 723, 730 (3rd Cir., 1974). Given the spousal relationship between Joseph and Jacqueline in this case, application of the DeLarosa principle to the instant facts demonstrate a clear danger that the jury might naturally be unable to separate acts committed during two distinct episodes.

The evidence introduced with respect to Jacqueline's criminal conduct, as set out in Counts 1 through 4 of the Indictment, is plainly inadmissible as to Joseph in connection with Counts 5 and 6 of the Indictment, particularly since the prosecutor conceded as much, the testimony at trial did not

THE UNIVERSITY OF CHICAGO
DIVISION OF THE PHYSICAL SCIENCES
DEPARTMENT OF CHEMISTRY
530 SOUTH EAST ASIAN AVENUE
CHICAGO, ILLINOIS 60607

TO THE HONORABLE CHAIRMAN
OF THE BOARD OF TRUSTEES

OF THE UNIVERSITY OF CHICAGO
530 SOUTH EAST ASIAN AVENUE
CHICAGO, ILLINOIS 60607

DEAR MR. CHAIRMAN:

I have the honor to acknowledge the receipt of your letter of the 10th inst.

concerning the proposed appointment of a new member to the Board of Trustees.

The Board of Trustees has been informed of the proposed appointment and has

expressed its interest in the proposed appointment and has

expressed its interest in the proposed appointment and has

implicate Joseph, and Joseph's obstructions were after, and in no way directly related to, the principal charges of mail fraud against Jacqueline, the events supporting which occurred almost a year earlier.

It was, however, on the fact of the separate and distinct episodes that the Circuit Court held:

Nothing in this case convinces us that the jury was unable to separate the evidence presented as proof of the charge against Jacqueline Marinelli from the evidence presented as proof of the charges against Joseph Marinelli.

(Opinion of the Third Circuit Court of Appeals, Hunter, J. dated March 29, 1984, at p. 3). With literally no analysis, the Circuit Court found no abuse of the trial court's discretion in failing to

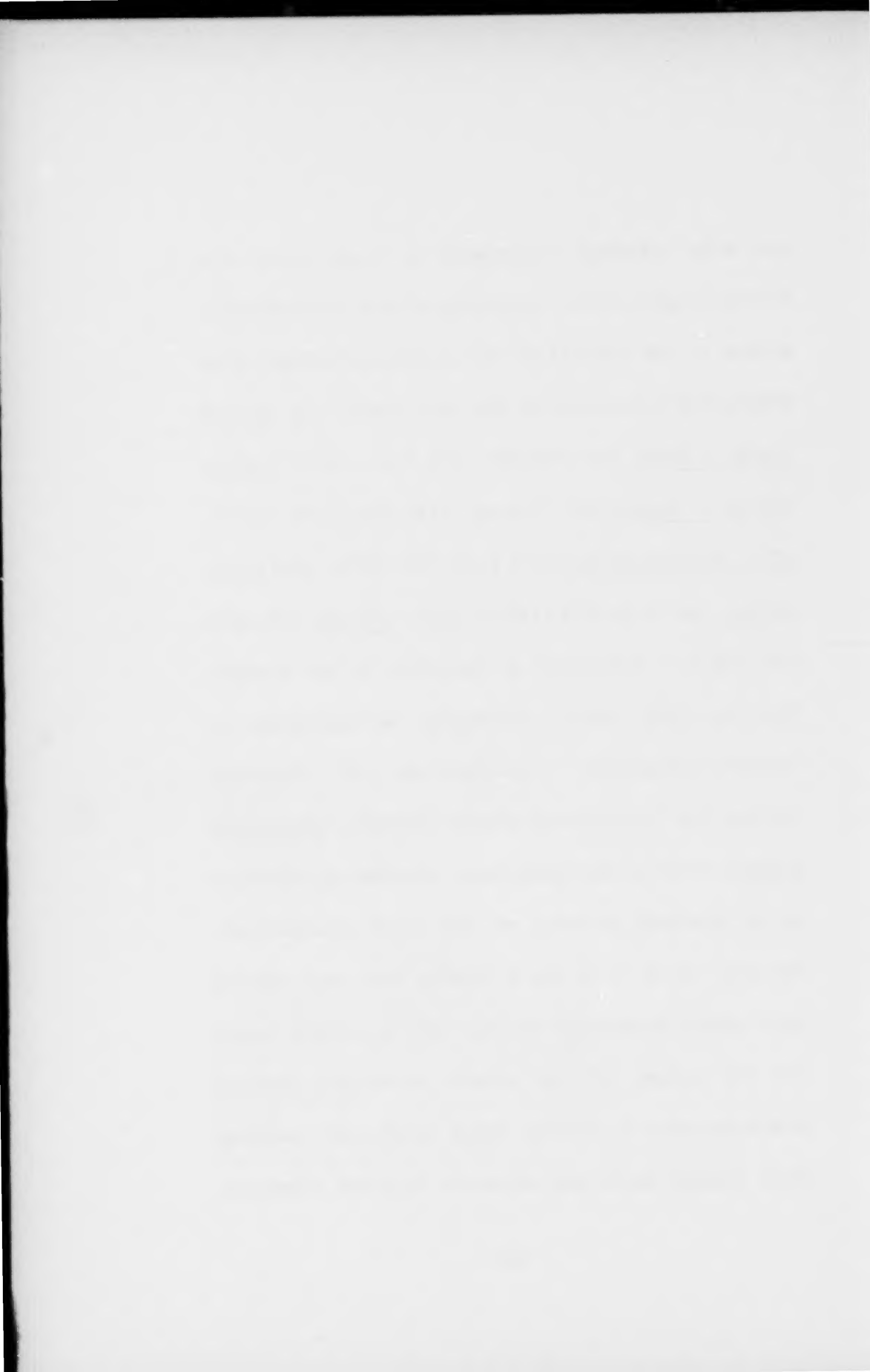


grant severance.¹

The blending of evidence of these separate criminal episodes at one trial improperly prejudiced Joseph all the more virulently because the co-defendants were husband and wife. The Third Circuit has ironically recognized that "a severance may be granted for a co-defendant spouse, if necessary to protect his or her rights". United States v. Ammar, 714 F.2d 238, 257 (3rd Cir., 1983), citing United States v. Fields, 458 F.2d 1194 (3rd Cir., 1972). In both Ammar and Fields, the Third Circuit recognized the possibility of severance growing out of the unique relationship of husband

-
1. The Court's Opinion cited four cases, United States v. Kenny, *supra*; United States v. Roselli, 432 F.2d 879, (9th Cir., 1970); United States v. Park, 531 F.2d 754 (5th Cir., 1976); and United States v. DeLarosa, *supra*, for various propositions related to the severance questions addressed here, but failed to support those citations, or their conclusions, with any legal reasoning.

and wife, although concededly in those cases, the spouse sought to bar testimony of the co-defendant spouse in the context of the marital privilege, thus mandating severance of the two trials. Cf. United States v. Pinc, 452 F.2d 507 (5th Cir., 1971); United States v. Snead, 447 F.Supp. 1321 (D.C. Pa. 1978), aff'd. without opinion 577 F.2d 730 (1978), and Cert. denied, 441 U.S. 909 (1979), Cert. denied, 436 U.S. 930 (1978). Petitioner is steadfast in the thought that no jury could reasonably be expected to "compartmentalize" consideration of evidence against the "uninvolved" spouse (Joseph), (DeLarosa, supra.), while at the same time considering evidence as to criminal activity of the other (Jacqueline). He also takes it to be a fiction that any typical juror could reasonably assume that a husband would not be aware of his wife's seemingly endless problems with a million dollar apartment building even though each had separate business interests,



having been married to each other for only several years.

Indeed, the trial court actually expressed that it was an appropriate inference for a jury to believe that a spouse would know about the criminal conduct of the other spouse (T.T., pp. 45-46).

PROSECUTOR: I'm suggesting that possibly (defense counsel) shouldn't represent both defendants and the reason I'm saying that, Your Honor, is that with regard to knowledge, for instance, (defense counsel) is saying that the jury could reasonably infer that because these are husband and wife, one knew what the other was doing at the time.

THE COURT: No, (defense counsel) didn't say that. I said that. (Defense counsel) said it would be improper for the jury to jump to that conclusion but they probably would anyway.

PROSECUTOR: That's what I meant they probably would infer that one knew what the other one was doing and that sort of thing.

(T.T., pp. 45-46) (emphasis supplied).

While this Court has said that there must be an abuse of discretion to reverse a trial court's denial of a motion for severance, the American Bar Association Standards Relating To The Administration Of Criminal Justice, Joinder and Severance, 13-3.1(a) (2nd Ed. tentative draft 1978) provide:

- a.) Whenever two or more unrelated offenses have been joined for trial the prosecuting attorney or the defendant shall have a right to a severance of the offenses.

(Emphasis supplied).

Under the peculiar circumstances extant here, i.e. no evidence against Joseph and the status of husband and wife, the plethora of evidence against Jacqueline had an impermissibly prejudicial impact on Joseph's ability to get a fair trial on his own counts.

the Commission has been established to
investigate the causes of the disaster
and to recommend measures to prevent
such accidents in the future. The
Commission will also be responsible for
co-ordinating the work of the various
departments concerned with the
safety of the ship.

The Commission will be composed of
representatives of the various
departments concerned with the
safety of the ship. It will also
include representatives of the
public and of the shipping industry.

The Commission will be responsible for
investigating the causes of the disaster
and for recommending measures to
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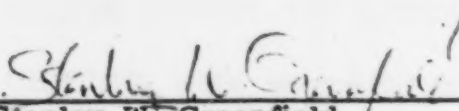
That impact is all the more telling in the light of Joseph's testimonial denial of the charges against him requiring a sensitive resolution of his credibility, and his contention that he knew nothing of his wife's business, because both she and he wished it that way, each having remarried for a second time.

CONCLUSION

For the reasons set forth herein, it is respectfully submitted that this Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit should be granted.

Respectfully submitted,

GREENFIELD & MURTAGH



Stanley W. Greenfield,
Attorney for Petitioner,
Joseph Marinelli



CERTIFICATE OF SERVICE

COMMONWEALTH OF PENNSYLVANIA)
COUNTY OF ALLEGHENY) SS:


I hereby certify that on the 18th day of May, 1984, three (3) true and correct copies of the foregoing PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT, were served on each of the individuals and in the manner indicated below, which service satisfies the requirements of Rule 28 of the United States Supreme Court Rules.

SERVICE BY FIRST CLASS, UNITED STATES MAIL, POSTAGE PREPAID:

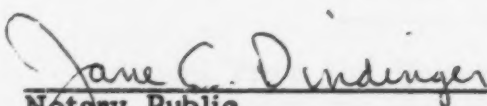
1. Rex E. Lee
SOLICITOR GENERAL
United States Department of Justice
Room 5143
Main Justice Building
Washington, D.C. 20530

2. Paul J. Brysh, Esquire
Assistant United States Attorney
Western District of Pennsylvania
633 U. S. Post Office and Courthouse
Seventh Avenue and Grant Street
Pittsburgh, Pennsylvania 15219

GREENFIELD & MURTAGH


Stanley W. Greenfield,
Attorney for Petitioner,
Joseph Marinelli

SWORN to and subscribed before me
this 18th day of May, 1984.


Jane C. Dindinger
Notary Public

My Commission Expires:

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 83-5274 and 83-5275

UNITED STATES OF AMERICA

vs.

JACQUELINE MARINELLI,
Appellant in No. 83-5274

UNITED STATES OF AMERICA

vs.

JOSEPH MARINELLI,
Appellant in No. 83-5275

Appeal From the United States District
Court For the Western District of
Pennsylvania - Pittsburgh
D.C. Criminal Nos. 82-00143-01
& 82-00143-02
District Judge: Gustave Diamond

Argued March 5, 1984

Before: HUNTER, BECKER, Circuit Judges
and HOFFMAN,* District Judge
Opinion filed Mar 29, 1984

*Honorable Walter E. Hoffman, United States
District Judge for the Eastern District of Virginia,
sitting by designation.

THE HISTORY OF THE

REPUBLIC OF THE UNITED STATES OF AMERICA

FROM 1776 TO 1863

BY

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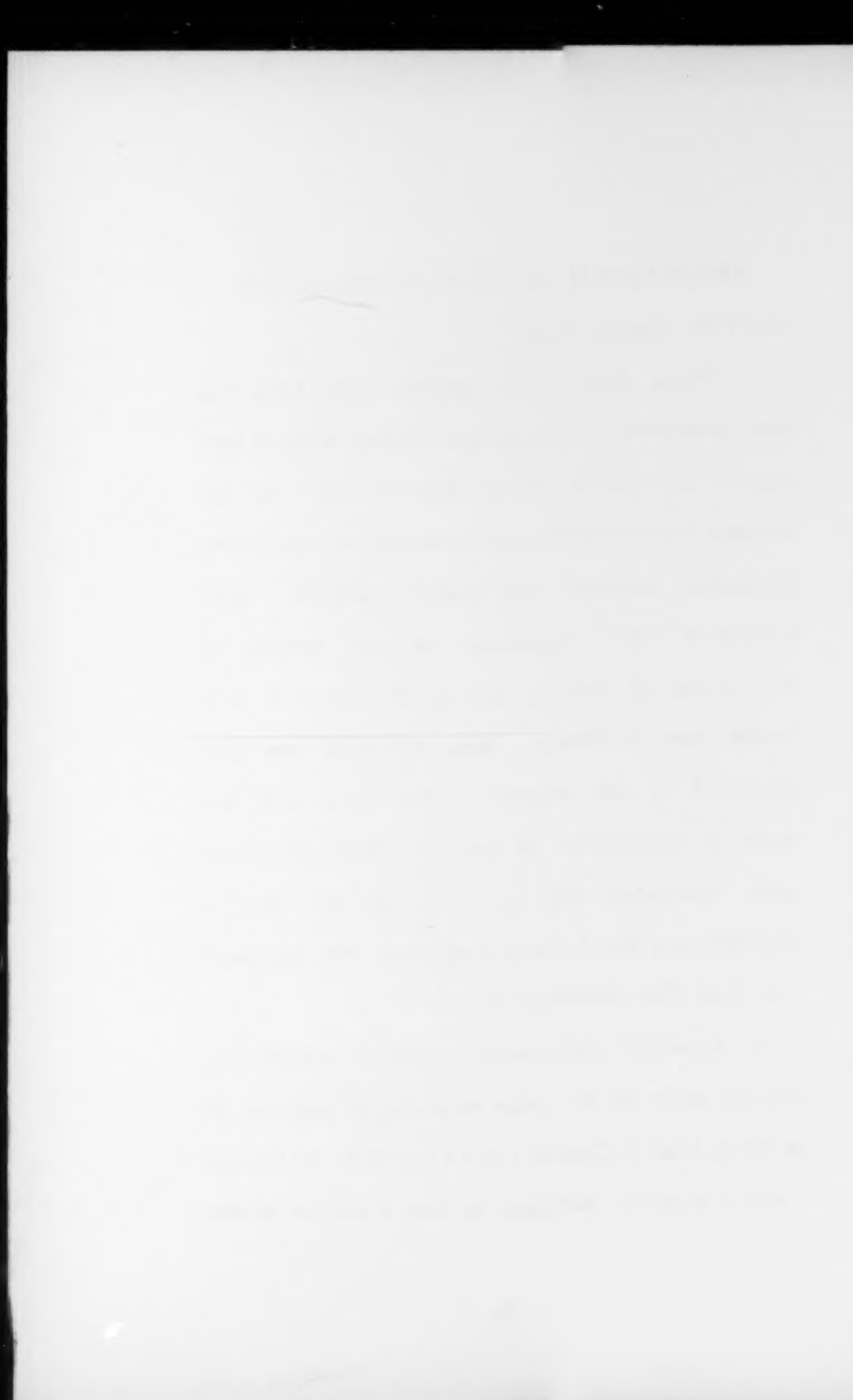
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MEMORANDUM OPINION OF THE COURT

HUNTER, Circuit Judge

1. These consolidated appeals arise from the final judgments of conviction entered after a jury trial in the United States District Court for the Western District of Pennsylvania against appellants, Jacqueline Marinelli and Joseph Marinelli. Both appellants were convicted on two counts of obstruction of justice, but under Count 6 only Joseph was involved. Mrs. Marinelli was also convicted on two counts of mail fraud and one count of subornation of perjury. Both appellants were sentenced to a total of 30 months imprisonment and 3 years probation. Mr. Marinelli was fined five thousand dollars.

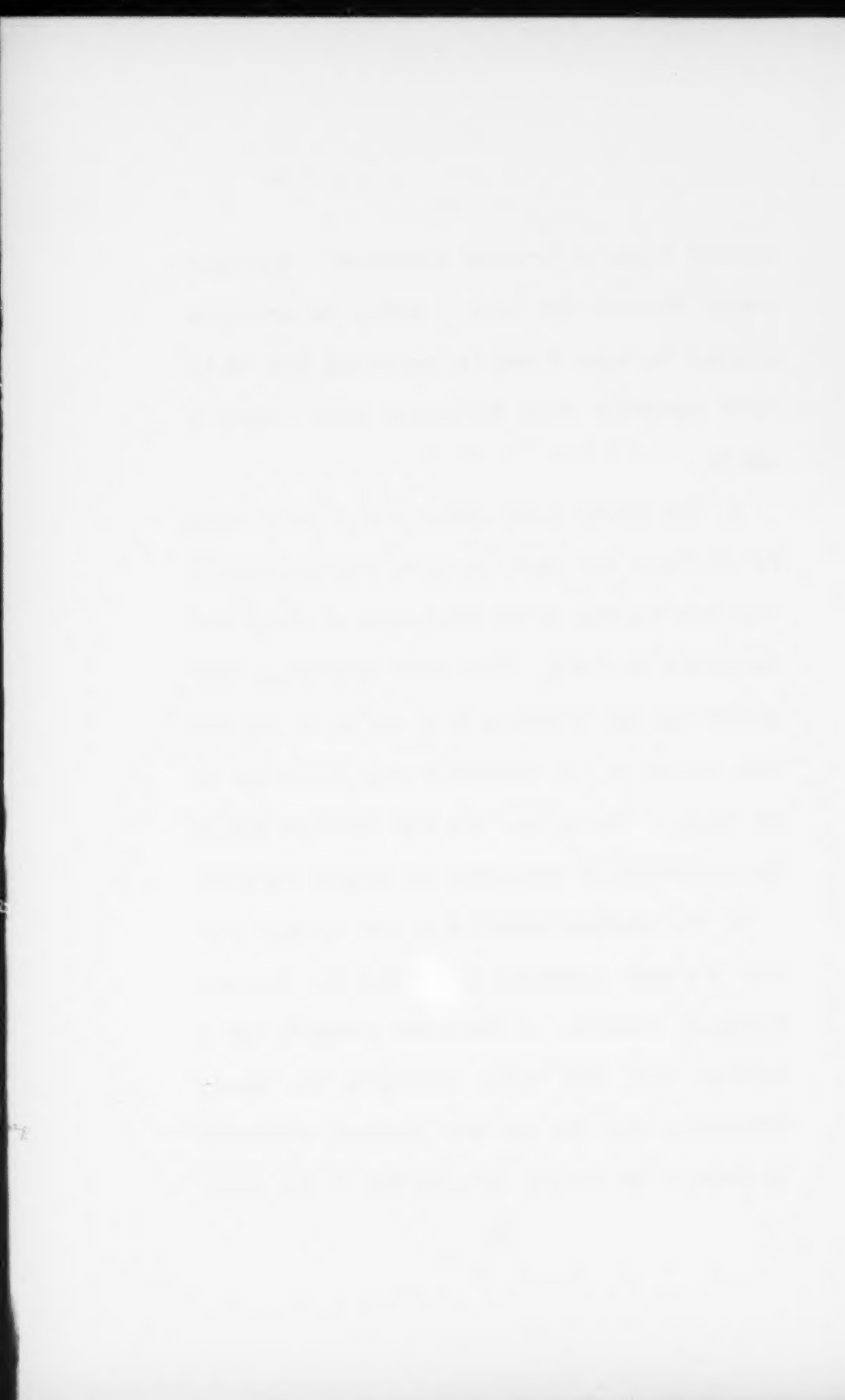
2. Appellant Jacqueline Marinelli moved the district court for an order requiring an election or separate trial of Counts 1 and 2 together and Counts 3 and 4 together, pursuant to Rule 8 and 14 of the



Federal Rules of Criminal Procedure. Appellant Joseph Marinelli also made a motion for severance pursuant to Rules 8 and 14, requesting that he be tried separately from Jacqueline under Counts 5 and 6.

3. The district court denied both of the motions for severance and heard the cases in a consolidated trial that resulted in the convictions of Joseph and Jacqueline Marinelli. That court determined that joinder was not erroneous as a matter of law and that neither of the defendants was prejudiced by the joinder. We agree. We will therefore affirm the convictions of Jacqueline and Joseph Marinelli.

4. The evidence presented at trial revealed that Mrs. Marinelli attempted to defraud the Reliance Insurance Company of insurance proceeds for a building that had been destroyed by arson. Thereafter, both Mr. and Mrs. Marinelli attempted to obstruct the federal investigation of the arson



and mail fraud by requesting certain individuals to prepare fraudulent statements concerning materials they supplied to James Zarilla for use at the Hancock Building prior to its destruction.

5. The Marinellis and all charges against them were properly joined in the indictment because the actions of both appellants, which led to the charges against them, were part of the same series of transactions. Joinder is proper under Rule 8 of the Federal Rules of Criminal Procedure "so long as the evidence introduced at trial connects each of the defendants to an overall scheme." United States v. Kenny, 462 F.2d 1205, 1216 (3d Cir.), cert. denied sub nom Kropke v. United States, 409 U.S. 914 (1972). "[E]ven dissimilar charges may be joined against multiple defendants if they arise out of the same series of transaction." United States v. Roselli, 432 F.2d 879, 898 (9th Cir. 1970), cert. denied, 401 U.S. 924 (1971). The word "trans-

action" may "comprehend a series of many occurrences, depending not so much upon the immediateness of their connection as upon their logical relationship." United States v. Park, 531 F.2d 754, 761 (5th Cir. 1976), quoting Moore v. New York Cotton Exchange, 270 U.S. 593, 610 (1925). In this case, the actions of the Marinellis were clearly part of an overall scheme despite the fact that each of the appellants acted, in part, on his or her own. Joinder of the offenses and of the defendants was, therefore, proper under Rule 8 of the Federal Rules of Criminal Procedure.

6. The district court's refusal to grant the appellants' motion for severance did not constitute an abuse of discretion. In determining whether a defendant was prejudiced under Rule 14, we have declared that a ". . . [p]rimary consideration is whether the jury can reasonably be expected to compartmentalize the evidence as it relates to sep-

arate defendants in view of its volume and limited admissibility." United States v. DeLarosa, 450 F.2d 1057, 1065 (3d Cir.), cert. denied, 405 U.S. 927 (1971). Nothing in this case convinces us that the jury was unable to separate the evidence presented as proof of the charge against Jacqueline Marinelli from the evidence presented as proof of the charges against Joseph Marinelli. There was no abuse of discretion in the district court's refusal to sever in this case.

7. Accordingly, for the reasons set forth above, the order of the district court will be affirmed.

TO THE CLERK

Please file the foregoing Opinion.

/s/ James Hunter III
JAMES HUNTER, III,
Circuit Judge



UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 83-5274 and 83-5275

UNITED STATES OF AMERICA
vs.
JACQUELINE MARINELLI,
Appellant in No. 83-5274

UNITED STATES OF AMERICA
vs.
JOSEPH MARINELLI,
Appellant in No. 83-5275

Appeal From the United States District
Court For the Western District of
Pennsylvania - Pittsburgh
D.C. Criminal Nos. 82-00143-01
& 82-00143-02
District Judge: Gustave Diamond

Before: HUNTER, BECKER, Circuit Judges
and HOFFMAN,* District Judge

*Honorable Walter E. Hoffman, United States
District Judge for the Eastern District of Virginia,
sitting by designation.

JUDGMENT

This cause came to be heard on the record
from the United States District Court for the

Western District of Pennsylvania - Pittsburgh and
was argued March 5, 1984.

On consideration whereof, it is now ordered
and adjudged by this Court that the Order of the
District Court entered April 13, 1983 be, and the
same is hereby, affirmed.

ATTEST: /s/M. Elizabeth Ferguson
 M. Elizabeth Ferguson,
 Chief Deputy Clerk

Dated: March 29, 1984

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 83-5275

UNITED STATES OF AMERICA

vs.

JOSEPH MARINELLI, Appellant

Pursuant to Rule 41(b) of the Federal Rules of Appellate Procedure, it is O R D E R E D that issuance of the certified judgment in lieu of formal mandate in the above cause be, and it is hereby stayed until May 19, 1984.

/s/ James Hunter, III
Circuit Judge

Dated: April 19 1984